

1 Clay M. Gatens
Michelle A. Green
2 Jeffers, Danielson, Sonn & Aylward, P.S.
P.O. Box 1688
3 Wenatchee, WA 98807-1688
4 (509) 662-3685 / (509) 662-2452 FAX

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6
7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON
9

10 SUSAN P. LAIR, individually and on)
11 behalf of all others similarly situated,) NO. CV-13-316-RHW
12)
13 Plaintiff,) COMPLAINT FOR CLASS ACTION
14)
15 vs.) **JURY TRIAL DEMANDED**
16)
17 OUTERWALL, INC., a Delaware)
18 corporation, d/b/a Coinstar,)
19 Defendants.)
20)
21)
22)
23)
24)
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26)

20 Plaintiff, Susan P. Lair (“Lair”), by and through her attorneys of record, Jeffers,
21 Danielson, Sonn & Aylward, P.S., by Clay M. Gatens and Michelle A. Green, brings
22 this Class Action Complaint and alleges as follows, upon personal knowledge as to
23 herself and her own acts and experiences and, as to all other matters, upon information
24 and belief based upon, *inter alia*, investigation conducted by her attorneys:
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COMPLAINT FOR CLASS ACTION

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Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

I. INTRODUCTION

1.1 Lair brings this action on behalf of herself and other similarly situated consumers who purchased gift certificates from Outerwall, Inc., a Delaware corporation, d/b/a Coinstar (“Coinstar”). Coinstar-brand gift certificates (marketed as e-Certificates or “Coin to Card” gift cards) are sold to consumers and issued by Coinstar on thermal-printed receipts from Coinstar kiosk machines located throughout the United States. The thermal-printed gift certificates contain the alpha-numerical codes necessary for the consumer to redeem the gift certificate with Coinstar’s retail and service partners. The thermal-printed gift certificates fade quickly after issuance and become un-readable and therefore, un-redeemable by the consumer, within very short periods of time. Without the alpha-numerical code necessary to redeem the gift certificate, the gift certificate is effectively expired and the consumer is deprived the value of their purchase. The gift certificates violate Washington state law because they have effective expiration dates and other deceptive terms that are illegal under Washington state law.

1.2 Coinstar does not charge the typical fee for its coin counting service (9.8 cents per U.S. dollar) if a customer elects to purchase a gift certificate instead of receiving a cash voucher, thereby inducing its customers to buy the illegal gift

1 certificates. Coinstar induces customers to purchase gift certificates instead of
2 receiving a cash voucher by making statements such as: “**Cash in for zip, zero,**
3 **zilch.**”; “**No fee!**”; “**Do the gift cards and e-certificates have a fee? Nope, that’s the**
4 **gift.**”; and “**Get that feeling of No Fee Bliss next time you pour your coins at**
5 **Coinstar for a NO FEE eCertificate or Gift Card.**”
6

7
8 1.3 Coinstar violates Washington state law by inducing consumers to buy the
9 gift certificates, while knowing that the thermal-printed gift certificates will fade
10 within a short time period and effectively expire, which is forbidden under the
11 Washington Gift Card Act (RCW 19.240 *et seq.*) (the “Gift Certificate Act”). Coinstar
12 imposes other illegal restrictions on the use of its certificates as well. For example,
13 Coinstar states: “**NOT VALID FOR CASH** except as required by law” or similar
14 language in bold print on the face of its certificates. Coinstar also states:
15 “Redeemable only for purchases of certain products at [name of retailer selected by
16 consumer]” and “Not redeemable for cash” on the face of its certificates. The effective
17 expiration date and other limitations imposed by Coinstar are clearly forbidden under
18 RCW 19.240.020. On information and belief, Coinstar and its retail and service
19 partners enforce these illegal limitations when consumers try to redeem gift certificates
20 at their retail and service locations.
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1.4 Coinstar's deceptive business practices violate the Gift Card Act and the Washington Consumer Protection Act (RCW 19.86 *et seq.*) (the "Consumer Protection Act") by unlawfully using thermal printing to create effective expiration dates and implementing other illegal limitations on the face of the gift certificates that their customers have purchased, and by falsely informing customers that they are not entitled to retain surplus value or use the certificates for certain "ineligible" products. Customers are never informed these restrictions are in direct violation of Washington law. On information and belief, many customers choose to forego using their gift certificates once the alpha-numerical code has faded and becomes unreadable. On information and belief, many customers forego asking for a refund of any unused value of their gift certificates, based on the statement on the gift certificate: **"NOT VALID FOR CASH** except as required by law." On information and belief, Coinstar's retail and service partners enforce and enable these illegal restrictions when consumers attempt to redeem their gift certificates. The result of these unfair and deceptive practices is that consumers are often deceived out of redeeming their gift certificates, or deceived to believe that they must redeem them at a reduced rate.

1.5 During the process of purchasing a gift certificate, Coinstar does not disclose all of these stated restrictions, including the fade propensity of the thermal

1 receipts and thus, the effective expiration date. Further, the stated restrictions in some
2 cases contradict statements within Coinstar's "terms of use" and/or its retail and
3 service partners' "terms and conditions," which a consumer is directed to review after
4 he or she has already been induced to select the gift certificate option. This is a
5 misleading marketing practice that violates the Consumer Protection Act.
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8 1.6 On information and belief, Coinstar engages in these unfair and deceptive
9 practices in an effort to maximize the number of customers who either never redeem
10 their gift certificate because of the effective expiration date (therefore losing the entire
11 value of the gift certificate) and to maximize the number of customers who never
12 redeem their gift certificate for its full value. It is well known in the gift certificate
13 industry that a significant source of the benefit for a business selling gift certificates is
14 that a substantial number of customers never redeem them. Coinstar's actions seek to
15 maximize this "margin" in the gift certificate business by misleadingly encouraging
16 consumers to never redeem their gift certificates, or to redeem them for less than the
17 full value to which they are entitled under law.
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19

20 1.7 Lair brings this action on behalf of herself and the putative class described
21 below seeking injunctive relief, damages, and reasonable attorney fees and costs for
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1 Coinstar's violations of the Consumer Protection Act and the Gift Card Act, unjust
2 enrichment, and such other and further relief as the Court deems equitable and just.
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4 II. PARTIES

5 2.1 Representative Plaintiff. Plaintiff, Susan P. Lair ("Lair"), is a married
6 woman acting in her separate estate and was at all times material hereto a resident of
7 Douglas County, Washington. Lair has agreed to act as class representative in this
8 matter.
9

10 2.2 Defendant. Defendant, Outerwall, Inc. d/b/a Coinstar ("Coinstar"), is a
11 Delaware corporation. Coinstar does business throughout Washington and the United
12 States, including throughout Chelan County and Douglas County within the Eastern
13 District of Washington.
14

15 2.3 Putative Class Members. The members of the relevant class include all
16 citizens of the State of Washington, who at any time within four years from the date of
17 this action purchased a gift certificate from Coinstar in the State of Washington that was
18 subject to the illegal restrictions identified in this Complaint (the "Class"). Excluded
19 from the Class are: (i) any judge presiding over this action and members of their families;
20 (ii) Coinstar, its subsidiaries, parents, successors, predecessors, and any entity in which
21 Coinstar or its parents have a controlling interest and their current or former employees,
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1 officers, and directors; (iii) persons who properly execute and file a timely request for
2 exclusion from the Class; and (iv) the legal representatives, successors, or assigns of any
3 such excluded persons.
4

5 **III. JURISDICTION AND VENUE**

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7 3.1 Venue in this Court is proper pursuant to RCW 4.12.020, RCW 4.12.025,
8 RCW 7.24 *et seq.*, and 28 U.S.C. § 1391.
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10 3.2 This Court has jurisdiction of these claims pursuant to 28 U.S.C. § 1332.

11 **IV. FACTS**

12
13 4.1 Coinstar does business in the State of Washington and throughout the
14 United States. The services Coinstar offers to consumers include converting coins into
15 cash vouchers and free coin counting when consumers use their coins to purchase Coin
16 to Card gift certificates for Coinstar's retail and service partners.
17

18 4.2 Coinstar sells gift certificates to consumers from its Coinstar kiosks
19 located throughout Washington and the United States.
20

21 4.3 To stimulate consumer interest and a sense of urgency in consumers to
22 purchase gift certificates from Coinstar, Coinstar does not charge the typical fee for its
23 coin counting service (9.8 cents per U.S. dollar) if a customer elects to purchase a gift
24 certificate instead of receiving a cash voucher, thereby inducing its customers to buy
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1 the illegal gift certificates. Coinstar uses deceptive marketing efforts to induce
2 customers to purchase gift certificates instead of receiving a cash voucher.
3

4 4.4 Coinstar violates Washington law by inducing consumers to buy the gift
5 certificates, while knowing that the thermal-printed gift certificates will fade within a
6 short time period and effectively expire, which is prohibited under the Gift Certificate
7 Act. Coinstar imposes other illegal restrictions on the use of its certificates as well.
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9

10 4.5 Lair is a resident of Douglas County, Washington. Lair purchased gift
11 certificates from various Coinstar locations within King County, Chelan County, and
12 Douglas County, Washington, in 2010, 2011, 2012, and 2013.
13

14 4.6 The gift certificates purchased by Lair from Coinstar were issued on
15 thermal printed receipts, which faded within a couple of weeks or months of Lair's
16 purchase and before Lair had the opportunity to redeem the gift certificates. As a
17 result of this fading, Lair was unable to redeem at least three (3) of the gift certificates
18 she purchased between 2010 and 2013. Lair believes the value of the non-redeemed
19 gift cards was approximately one hundred and fifty dollars (\$150.00).
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23 4.7 The gift certificates purchased by Lair had effective expiration dates of
24 one year or less because of the fade propensity of the thermal-printed gift certificates,
25 and they included other illegal terms that violate the Gift Card Act and the Consumer
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1 Protection Act. Coinstar did not disclose the expiration date and the illegal terms to
2
3 Lair.

4 4.8 As a result of Coinstar's deceptive practices, Lair did not receive the full
5
6 value of the gift certificates she purchased from Coinstar.

7 **V. CLASS ALLEGATIONS/PROPRIETY OF**
8 **CLASS ACTION PROSECUTION**

9 5.1 Request for Certification. Lair seeks certification of the above-described
10
11 Class.

12 5.2 Numerosity (CR 23(a)(1)). The exact number of Class members is
13
14 unknown to Lair at this time. According to Coinstar's website, Coinstar has kiosk
15
16 machines in nearly 19,000 locations. On information and belief, Coinstar has
17
18 contracted with thousands of Class members throughout the State of Washington,
19
20 making joinder of each individual Class member impracticable. The exact number of
21
22 Class members may be discerned from Coinstar's records of gift certificate sales in
23
24 Washington, and such persons may be identified with particularity through appropriate
25
26 judicial notice and discovery procedures, such that it would be possible to give such
persons actual notice of these proceedings, if required.

5.3 Commonality and Predominance. Common questions of law and fact exist

1 as to all members of the Class and predominate over any questions affecting only
2 individual members. The common questions include without limitation:
3

4 (a) Whether Coinstar sold gift certificates to members of the Class
5 containing effective expiration dates and other restrictions in violation
6 of the Gift Card Act;
7

8 (b) Whether Coinstar's practices violate the Consumer Protection Act;
9

10 (c) Whether Coinstar's practices violate the public policy of the State of
11 Washington;
12

13 (d) Whether Coinstar was unjustly enriched as a result of receiving
14 payments from Lair and the Class; and
15

16 (e) Whether Lair and the Class are entitled to relief, and the nature of
17 such relief.
18

19 5.4 Typicality. Lair's claims are typical of the claims of the other members of
20 the Class. Lair and the Class sustained damages as a result of Coinstar's uniform
21 wrongful conduct during transactions with Lair and the Class. Lair and the Class have
22 been damaged by Coinstar's violations of the Gift Card Act and the Consumer
23 Protection Act, which were enacted for the protection of Washington citizens.
24

25 5.5 Adequate Representation. Lair will fairly and adequately represent and
26

1 protect the interests of the Class, and has retained counsel competent to litigate this
2 action. Lair comes before this Court in the same capacity as any other litigant seeking
3 redress for grievances and to seek class relief for all of those persons exposed to the
4 same harm for which she is aggrieved. The adequacy of Lair's ability to fairly and
5 adequately protect the interest of the Class does not depend upon her financial status
6 but rather upon:
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10 (a) The capacity of chosen counsel to adequately prosecute the case on
11 her behalf and on the behalf of the putative Class. Lair's attorneys, Jeffers, Danielson,
12 Sonn & Aylward, P.S., are experienced trial attorneys who have engaged in extensive
13 trial practice and have considerable experience in all aspects of class action litigation
14 from several other class action cases. Lair's counsel has the necessary skills, expertise,
15 and competency to adequately represent Lair's interest in those of the Class.
16
17

18
19 (b) Lair has no interests antagonistic to those of the Class, and Coinstar
20 has no defenses unique to Lair.
21

22 (c) Lair is ready and willing to bring this Class Action in a
23 representative capacity on behalf of the putative Class.
24

25 5.6 Appropriateness. This Class Action is appropriate for certification
26 because:

1 (a) The prosecution of separate actions by individual members of the
2 Class would create a risk of inconsistent or varying adjudications which would
3 establish incompatible standards of conduct for Coinstar and would also create the risk
4 of adjudication with respect to individual members of the Class which would, as a
5 practical matter, be dispositive of the interests of other persons not party to the
6 adjudication.
7

8
9 (b) The damages suffered by the individual members of the Class will
10 likely be small relative to the burden and expense of individual prosecution of the
11 complex litigation necessitated by Coinstar's wrongful conduct. Thus, it would be
12 virtually impossible for the individual members of the Class to obtain effective relief
13 from Coinstar's misconduct.
14

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16 (c) Coinstar has acted on grounds generally applicable to all putative
17 Class members, making final injunctive relief or declaratory relief appropriate with
18 respect to the class as a whole.
19

20
21 (d) This action is a superior method in preventing future economic and
22 pecuniary loss to thousands of Washington citizens and members of the public. This
23 action is uniquely directed to preserve the integrity and safety of Washington citizens,
24 the sanctity of business ventures, and to ensure that all Washington citizens are
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1 protected in the future by providing that businesses operating in Washington may not
2 sell gift certificates without complying with the statutory protections for consumers.
3
4 The Class will benefit by redress from the ongoing action which, if left to thousands of
5 individual actions, would greatly congest the forums of the Superior Courts of the state
6 of Washington. Any difficulties which may be encountered in this action will be slight
7 compared to the impracticality of having thousands of individuals bringing individual
8 actions and thereby unnecessarily burdening the courts throughout the State of
9 Washington. The class litigation is a fair, efficient and expeditious vehicle for
10 providing redress to both unnamed and named plaintiffs and to as yet unidentified
11 Class members.
12

13 (e) This action is superior to any other available method for the fair
14 and efficient adjudication of the controversy.
15

16 5.7 Lair reserves the right to revise the Class definitions based upon
17 information learned through discovery.
18

19 VI. DEMAND FOR JURY TRIAL

20 Lair, on behalf of herself and the putative class described above, hereby
21 demands a jury in this action and requests that this action be tried by a jury of twelve
22 (12) persons.
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1 On information and belief, the amount in controversy exceeds seventy five
2 thousand dollars (\$75,000.00).
3

4 **VII. FIRST CAUSE OF ACTION:**
5 **DECLARATORY RELIEF PURSUANT TO RCW 7.24 *et seq.***

6 7.1 There exists an actual controversy between Lair and the Class on one
7 hand, and Coinstar on the other, to the extent Coinstar's practicing relative to its sale
8 and issuance of gift certificates are contrary to Washington law and public policy.
9

10 7.2 As described above, Coinstar's transactions with Lair and the Class
11 violate the Consumer Protection Act and the Gift Card Act in that Coinstar is selling
12 gift certificates to consumers with undisclosed, effective expiration dates, and Coinstar
13 unlawfully restricts redemption when a consumer makes a purchase for less than the
14 full value of the gift certificate and unlawfully restricts redemption to only "eligible"
15 products of Coinstar's retail and service partners, which are not disclosed in advance to
16 consumers.
17

18 7.3 Coinstar's sales of gift certificates with expiration dates and redemption
19 restrictions to Lair and the Class are contrary to applicable Washington law and are
20 therefore void under RCW 19.240.110.
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1 7.4 Lair and the Class have tangible legal interests in the instant controversy,
2
3 including without limitation:

4 (a) Their interest in receiving full value of the gift certificates they
5 purchased from Coinstar without regard to unlawful expiration dates
6 and single-transaction redemption restrictions; and

7
8 (b) Their interest in obtaining injunctive relief so that Coinstar does not in
9 the future employ deceptive practices in its business dealings with
10 consumers.
11

12
13 7.5 Lair and the Class seek injunctive relief prohibiting Coinstar from
14 refusing to honor certificates in accordance with Washington law, and to prevent
15 Coinstar from continuing its unlawful, unfair, and deceptive business practices as
16 described in this Complaint.
17

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19 **VIII. SECOND CAUSE OF ACTION:**
20 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**

21 8.1 Coinstar's and/or its agents' actions in:

22 (a) Marketing and selling gift certificates that are subject to effective
23 expiration dates which violate Washington state law;
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1 (b) Marketing and selling gift certificates with purported explicit
2 restrictions on the gift certificates such as, “NOT VALID FOR CASH
3 except as required by law,” which restrictions violate Washington state
4 law;
5

6
7 (c) Marketing and selling gift certificates with terms on the face of the gift
8 certificates that contradict terms contained in Coinstar’s retail or
9 service partners’ “additional terms and conditions”; and
10

11 (d) Facilitating and enforcing these illegal restrictions when consumers
12 attempt to redeem a gift certificate;
13

14 constitute unfair or deceptive acts in trade or commerce in violation of the Consumer
15 Protection Act, RCW 19.86 *et seq.*
16

17 8.2 Coinstar’s violations of the Consumer Protection Act set forth above are
18 injurious to the public interest and have/had the capacity to injure or deceive other
19 persons and/or the public. It is likely that additional persons have been or will be
20 injured in the same manner as Lair in this case.
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23 8.3 As a result of Coinstar’s unfair and deceptive practices, Lair and the Class
24 have been deprived of the full value of the gift certificates to which they are legally
25 entitled under Washington law, and have either discarded the gift certificates that they
26

1 were deceived into believing had effectively expired, or have been deceived into either
 2 giving up some portion of the value of the gift certificate or accepting delivery of
 3 goods and/or services that they did not want for the sole purpose of receiving some
 4 approximation of full value of the gift certificate.
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6
 7 8.4 As a direct and proximate result of Coinstar's and/or its agents' violations
 8 of the Consumer Protection Act set forth above, Lair and the Class have suffered
 9 economic damages in an amount to be proven at trial.
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11 8.5 Lair and the Class are entitled to treble damages for Coinstar's violations
 12 of the Consumer Protection Act under RCW 19.86.090.
 13

14 8.6 Coinstar is liable to Lair and the Class reasonable attorney fees and costs,
 15 in addition to the statutory damages.
 16

17 **IX. THIRD CAUSE OF ACTION:**
 18 **RESTITUTION/UNJUST ENRICHMENT**

19 9.1 Coinstar knowingly received and retained benefits from Lair and the Class
 20 under circumstances that would render it unjust to allow Coinstar to retain such
 21 benefits.
 22

23 9.2 Under principles of equity and good conscience, Coinstar should not be
 24 permitted to retain the monies belonging to Lair and the Class that Coinstar was paid in
 25
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1 the form of payment for illegal gift certificates and that Coinstar unjustly received as a
2 result of its misconduct alleged herein.
3

4 **X. REQUEST FOR RELIEF**

5 Based on the foregoing allegations, Plaintiff, Susan P. Lair, individually and on
6 behalf of others similarly situated, requests that the Court grant the following relief:
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8 1. For an order certifying this case as a class action, and designating Lair as
9 Class Representative and her attorneys as Class Counsel;
10

11 2. For an order declaring Coinstar's conduct in the sale of gift certificates to
12 Lair and the Class to be illegal under Washington state law, and granting injunctive
13 relief as necessary to protect Lair and the Class, and to prohibit the continuing conduct
14 of Coinstar's business in ways that violate Washington state law;
15

16 3. For entry of a judgment in favor of Lair and the Class and against
17 Coinstar for actual and liquidated damages in an amount to be proven at trial, including
18 treble damages as set forth above;
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20 4. For an order granting equitable and injunctive relief to Lair and the Class,
21 including restitution, disgorgement, and an accounting of all revenue gained by
22 Coinstar through its unlawful conduct alleged herein;
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1 5. For an order granting injunctive relief restraining Coinstar from further
2 violation of the Consumer Protection Act and the Gift Certificate Act as alleged herein
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4 6. For an order awarding Lair and the Class their reasonable attorney fees and
5 costs pursuant to RCW 19.86.090 and/or other applicable law;
6

7 7. For an order awarding Mrs. Lair and the Class pre- and post-judgment
8 interest; and
9

10 8. For such other and further relief as the Court deems just and equitable.
11

12 DATED this 27th day of August, 2013.

13 /s/CLAY M. GATENS

14 WSBA No. 34102

15 Attorneys for Plaintiffs

16 JEFFERS, DANIELSON, SONN &
17 AYLWARD, P.S.

18 2600 Chester Kimm Road

19 P.O. Box 1688

20 Wenatchee, WA 98807-1688

21 Telephone: 509-662-3685

22 Fax: 509-662-2452

23 Email: clayg@jdsalaw.com

 /s/MICHELLE A. GREEN

 WSBA No. 40077

 Attorneys for Plaintiffs

 JEFFERS, DANIELSON, SONN &
 AYLWARD, P.S.

 2600 Chester Kimm Road

 P.O. Box 1688

 Wenatchee, WA 98807-1688

 Telephone: 509-662-3685

 Fax: 509-662-2452

 Email: michelleg@jdsalaw.com